

is to be used and where partial performance may be utilized to the advantage of the Government, the clause in 852.211-78 will be included in the contract.

### **Subpart 811.6—Priorities and Allocations**

#### **811.602 General.**

(a) Priorities and allocations of critical materials are controlled by the Department of Commerce. Essentially, such priorities and allocations are restricted to projects having a direct connection with supporting current defense needs. The Department of Veterans Affairs is not authorized to assign a priority rating to its purchase orders or contracts involving the acquisition or use of critical materials.

(b) In those instances where it has been technically established that it is not feasible to use a substitute material, the Department of Commerce has agreed to assist us in obtaining critical materials for maintenance and repair projects. They will also, where possible, render assistance in connection with the purchase of new items, which may be in short supply because of their use in connection with the defense effort.

(c) Contracting officers having problems in acquiring critical materials will ascertain all the facts necessary to enable the Department of Commerce to render assistance to the Department of Veterans Affairs in acquiring these materials. The contracting officer will submit a request for assistance containing the following information to the Deputy Assistant Secretary for Acquisition and Materiel Management (90):

- (1) A description of the maintenance and repair project or the new item, whichever is applicable;
- (2) The critical material and the amount required;
- (3) The contractor's sources of supply, including any addresses. If the source is other than the manufacturer or producer, also list the name and address of the manufacturer or producer;
- (4) The Department of Veterans Affairs contract or purchase order number;

(5) The contractor's purchase order number, if known, and the delivery time requirement as stated in the solicitation or offer;

(6) The additional time the contractor claims will be necessary to effect delivery if priority assistance is not provided;

(7) The nature and extent of the emergency that will be generated at the station, e.g.,

- (i) damage to the physical plant,
- (ii) impairment of the patient care program,
- (iii) creation of safety hazards, and
- (iv) any other pertinent condition that will result because of failure to secure assistance in obtaining the critical materials; and

(8) If applicable, a statement that the item required is for use in a construction contract which was authorized by the Chief Facilities Management Officer, Office of Facilities Management, to be awarded and administered by the facility contracting officer.

### **PART 812—ACQUISITION OF COMMERCIAL ITEMS**

#### **Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

Sec.

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 63 FR 17338, Apr. 9, 1998, unless otherwise noted.

#### **812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(a) Notwithstanding prescriptions contained elsewhere in the VAAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part.

(b) The provision and clause in the following VAAR sections shall be used, in accordance with the prescriptions contained therein or elsewhere in the

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VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

(1) 852.219-70, Veteran-owned small business.

(2) 852.270-4, Commercial advertising.

(c) The provisions and clauses in the following VAAR sections must be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

(1) 852.207-70, Report of employment under commercial activities.

(2) 852.211-71, Guarantee clause.

(3) 852.211-72, Inspection.

(4) 852.211-73, Frozen processed foods.

(5) 852.211-74, Telecommunications equipment.

(6) 852.211-75, Technical industry standards.

(7) 852.214-70, Caution to bidders-bid envelopes.

(8) 852.216-70, Estimated quantities for requirements contracts.

(9) 852.229-70, Purchases from patient's funds.

(10) 852.229-71, Purchases for patients using Government funds and/or personal funds of patients.

(11) 852.233-70, Protest content.

(12) 852.237-7, Indemnification and Medical Liability Insurance.

(13) 852.237-70, Contractor responsibilities.

(14) 852.237-71, Indemnification and insurance (vehicle and aircraft service contracts).

(15) 852.252-1, Provisions or clauses requiring completion by the offeror or prospective contractor.

(16) 852.270-1, Representatives of contracting officers.

(17) 852.270-2, Bread and bakery products.

(18) 852.270-3, Purchase of shellfish.

(d) The clauses in the following VAAR sections shall be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items, provided the contracting officer

determines that use of the clauses is consistent with customary commercial practices.

(1) 852.211-70, Requirements for operating and maintenance manuals.

(2) 852.211-77, Brand name or equal.

(e) The contracting officer shall insert the clause in 852.271-70, Services provided eligible beneficiaries, by reference, in all requests for quotations, solicitations, and contracts meeting the prescription contained therein.

(f) Clauses are not required for micro-purchases using the procedures of this part or part 813. However, this does not prohibit the use of any clause prescribed in this part or elsewhere in this chapter in micro-purchases when determined by the contracting officer to be in the Government's best interest.

(g) When soliciting for commercial services or the use of medical equipment or space under the authority of part 873 and 38 U.S.C. 8151-8153, the provisions and clauses in the following VAAR sections may be used in accordance with the prescriptions contained therein or elsewhere in the VAAR:

(1) 852.273-70, Late offers.

(2) 852.273-71, Alternative negotiation techniques.

(3) 852.273-72, Alternative evaluation.

(4) 852.273-73, Evaluation—health-care resources.

(5) 852.273-74, Award without exchanges.

[63 FR 17338, Apr. 9, 1998, as amended at 64 FR 69934, Dec. 15, 1999; 68 FR 3468, Jan. 24, 2003]

### **812.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

*Agency procedures for approval of waivers:* Waivers to tailor solicitations in a manner that is inconsistent with customary commercial practice shall be prepared by contracting officers in accordance with FAR 12.302(c). Waiver requests shall be submitted to the contracting officer's next higher level supervisor for approval. Approved requests shall be retained in the contract file.